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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-89

13 **MARILYN JOYCE KIRSCHEN A.K.A.**
14 **MARILYN SCHERR**
3200 N. Mount Curve Ave.
Altadena, CA 91001
Registered Nurse License No. 314010

ACCUSATION

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
21 Department of Consumer Affairs.

22 **Registered Nurse License**

23 2. On or about March 31, 1980, the Board issued Registered Nurse License Number
24 314010 to Marilyn Joyce Kirschen, also known as Marilyn Scherr ("Respondent"). The
25 registered nurse license was in full force and effect at all times relevant to the charges brought
26 herein and will expire on July 31, 2011, unless renewed.

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STATUTORY PROVISIONS

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

REGULATORY PROVISION

7. California Code of Regulations, title 16, section ("Regulation") 1442 states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 9. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(1),
4 on the grounds of unprofessional conduct, in that between November 17, 2005, and November
5 22, 2005, while on duty as a registered nurse and providing home health care to patient S.G., a 92
6 year-old female with a gastrostomy tube ("GT") for the purpose of feeding, Respondent
7 committed acts constituting gross negligence, as defined in California Code of Regulations,
8 section 1442, as follows:

9 a. On or about November 18, 2005, Respondent utilized a pair of household pliers to
10 disconnect S.G.'s feeding tube with such force that the GT was dislodged, resulting in the tube
11 feeding going into the subcutaneous tissue, eroding the surrounding tissue at the GT site, and
12 causing a serious infection.

13 b. On or about November 18, 2005, Respondent failed to contact the S.G.'s physician
14 when she suspected that S.G. had an infection at the GT site. Further, Respondent failed to
15 follow-up with S.G.'s condition again until November 22, 2005.

16 Such conduct is an extreme departure from the standard of care which, under similar
17 circumstances, would have ordinarily been exercised by a competent registered nurse.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 10. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on
21 the grounds of unprofessional conduct, as more particularly set forth in paragraph 9,
22 subparagraphs a and b, above.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Board of Registered Nursing issue a decision:

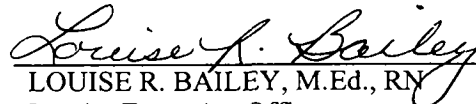
26 1. Revoking or suspending Registered Nurse License Number 314010, issued to
27 Marilyn Joyce Kirschen, also known as Marilyn Scherr;

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1 2. Ordering Marilyn Joyce Kirschen, also known as Marilyn Scherr, to pay the Board of
2 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3; and,

4 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: 8/19/09


LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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